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NEW DELHI, SATURDAY, MAY 15, 1993/VAISAKHA 25, 1915

इस खण्ड में भिन्न एक संख्या की जाती है जिससे कि यह अलग संकलन के रूप में
रचा जा सके

Separate Paging is given to this Part in order that it may be filed as a
separate compilation

भाग II—खण्ड 3—उप-खण्ड (iii)
PART II—Section 3—Sub-section (iii)

केन्द्रीय अधिकारियों (संघ राज्य क्षेत्र प्रशासन की छोड़कर) द्वारा जारी किए गए आदेश और अधिसूचनाएं
Orders and Notifications issued by Central Authorities (other than Administrations of Union
Territories)

भारत निर्वाचन आयोग

नई दिल्ली, 19 अप्रैल, 1993

आ. आ. 86.—गुजरात विधान सभा के लिए 1990 में हुए साधारण निर्वाचनों में 157-अंकलेश्वर विधान सभा निर्वाचन-क्षेत्र से निर्वाचन लड़ने वाले अभ्यर्थी श्री पटेल मोहनभाई, बेचारभाई, निवासी नागल, तालुका अंकलेश्वर, गुजरात को लोक प्रतिनिधित्व अधिनियम, 1951 की धारा 10क के अधीन उक्त अधिनियम के अधीन बनाए गए नियमों द्वारा अपेक्षित निर्वाचन व्ययों का लेखा दाखिल करने में असफल रहने के कारण निर्वाचन आयोग के तारीख 7-2-1992 के आदेश संख्या 76/गुजरात/90(80-146) (वि. स.) द्वारा निरहता किया गया था।

और, उक्त श्री पटेल मोहन भाई, बेचारभाई ने अपने ऊपर आरोपित निरहता हटाने के लिए निर्वाचन आयोग के समक्ष लेखा दाखिल करने में असफल रहने के कारण बताते हुए एक याचिका प्रस्तुत की थी।

और, इस मामले से सम्बद्ध सभी सारवान तथ्यों को ध्यान में रखते हुए और याचिका पर विचार करने के बाद,

आयोग ने लोक प्रतिनिधित्व अधिनियम, 1951 की धारा 11 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए अपने तारीख 19 अप्रैल, 1993 के आदेश द्वारा, उक्त अधिनियम की धारा 10क के अधीन आयोग के 7 फरवरी, 1992 के आदेश द्वारा आरोपित निरहता 19 अप्रैल, 1993 से हटा ली गई है।

अतः, अब, आयोग के तारीख 7 फरवरी, 1992 के आदेश सं. 76/गुजरात/90/(80-146) (वि. स.) जो 19 अप्रैल, 1993 को भारत के राजपत्र और गुजरात राज्य के राजपत्र में प्रकाशित हुआ था में से उक्त श्री पटेल मोहनभाई, बेचारभाई का नाम हटा लिया समझा जाएगा।

[सं. 76/गुजरात-वि.स./157/90/1321]

बलबन्त सिंह, सचिव

ELECTION COMMISSION OF INDIA

New Delhi, the 19th April, 1993

O.N. 86.—Whereas, Shri Patel Mohanbhai Bacharbhai Rjo Nangal, Tal. Ankleshwar, Gujarat a contesting candidate for the General Election to Gujarat Legislative Assembly from 157-Ankleshwar Assembly Constituency held in 1990 was disqualified by the Election Commission of India vide its Order No. 76/GJ/90(80-146)(LA), dated 7-2-1992 under sec-

tion 10A of the Representation of the People Act, 1951, for failure to lodge any account of his election expenses as required by the said Act and Rules made thereunder;

And whereas, the said Shri Patel Mohanbhai Becharbhai had submitted a petition before the Election Commission of India for removal of disqualification imposed on him, giving reasons for his failure to lodge the account.

And whereas, after considering the petition and taking into account all material facts of the case, the Election Commission in exercise of the powers conferred by section 11 of the Representation of the People Act, 1951 has, vide its order dated 19th April, 1993 removed the disqualification of Shri Patel Mohanbhai Becharbhai imposed upon him by the Commission's Order dated 7th February, 1992, under section 10A of the said Act, with effect from 19th April, 1993;

Now, therefore, the name of the said Shri Patel Mohanbhai Becharbhai shall be deemed to have been omitted from the Commission's order No. 76/GJ/90(80-146)(L.A.), dated the 7th February, 1992 as published in the Gazette of India and the Gujarat State Gazette on and from 9th April, 1993.

[No. 76/GJ-LA/157/90/1321]
BALWANT SINGH, Secy.

नई दिल्ली, 26 अप्रैल, 1993

आ. अ. 87.—निर्वाचन आयोग, 31-परभनी संसदीय निर्वाचन क्षेत्र में लोक सभा के लिए श्री अशोक आनंदराव देशमुख के निर्वाचन को प्रश्नगत करते हुए 1991 की निर्वाचन अर्जी संख्या 3 में बंबई उच्च न्यायालय औरंगाबाद पीठ के तारीख 10 फरवरी, 1992 के निर्णय को लोक प्रतिनिधित्व अधिनियम, 1951 (1951 का 43) की धारा 106 के अनुसरण में इसका द्वारा प्रकाशित करता है।

[संख्या 82/महा.-लो. स./3/91 (औरंगाबाद)/93]

आदेश से,
बलवन्त सिंह, सचिव

New Delhi, the 26th April, 1993

O.N. 87.—In pursuance of section 106 of the Representation of the People Act, 1951 (43 of 1951), the Election Commission of India hereby publishes the Judgement dated 10th February, 1992 of the High Court of Judicature at Bombay, Aurangabad Bench in Election Petition No. 3 of 1991, calling in question the election of Shri Ashok Anandrao Deshmukh to the House of the People from 31-Parbhani Parliamentary Constituency.

[No. 82/MT-HP/3/91(AURANGABAD)/93]

By order,
BALWANT SINGH, Secy

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

ELECTION PETITION NO 3 OF 1992

Shri Prataprao Caupatrao Bangar—Petitioner.

Vs.

Ashok Anandrao Deshmukh & Ors.—Respondents.
Shri U. B. Binwade and Shri S. V. Mundhe, Advs. for the Petitioner.

Shri S.C. Bora, Adv. for the Respondent No. 1. Rest of the Respondents served ex parte Shri M. P. Harjule, Advs. Ors. R. 8. Shri P.G. Godhamgaonkar, Advs. for R. 25, Shri S. K. Barlat v. AGP. for R. 23 & 24.

CORAM : A.A. HALBE, J.
FEBRUARY 10, 1992

ORDER BELOW EXHS. 6, 7 AND 8 :

All these applications, bearing above Exhibits have been preferred by the respondent No. 1—the Returned Candidate, Ex. 6 in respect of raising preliminary issue on the ground that the copy of the audio cassette has not been furnished to the Respondents and there is thus breach of Section 81(3) of the Representation of People Act ('R.P. Act' for short) and that the natural sequel to this is dismissal of the Election petition under Section 86 of the R. P. Act. The other ground on which the preliminary issue is sought to be raised is want of proper affidavit in support of the allegations of corrupt practices, more particularly in Form 25 under Rule 94-A of the Conduct of Election Rules as indicated in Ex. 8.

2. Ex. 7 relates to the contention that the copies of the audio cassette and video cassette in relation to the offending speeches delivered by Balasaheb Thakrey, Chagan Bhujbal, Ritambhara, Uma Bharati and Acharya Dharmendraji, on which the petitioner relies have not been supplied and thus there is breach as alleged above, which entails dismissal of the election petition.

3. Now, so far as application Ex. 6 about the preliminary issue is concerned, the petitioner has filed written statement at Ex. 6-A and has contended that the necessary cassettes have been lodged with the Court and that there is adequate compliance of Section 81 as well as Section 83 of the R. P. Act. There is, therefore, no need to raise the preliminary issue as indicated above. However, during the course of argument, it has been virtually conceded by the petitioner that since the issue go to the very root of the existence of the election petition, they may be framed and heard as preliminary issues. Accordingly, the following preliminary issues

ISSUES

- (i) Whether the election petitions liable to be dismissed for non-service of copies of audio and video cassettes on the respondents in contravention of Section 81(3) and Section 86(1) of the R. P. Act?
- (ii) Whether the election petition is liable to be dismissed in absence of proper affidavit in support of the corrupt practices as required under proviso to sub-section (c) sub-section 1 of section 83 of the R.P. Act?

My findings thereon are :

- (i) Yes.
- (ii) No.

4. The first important issue raised by the learned advocate for the respondent no. 1 in application Ex. 7 is that all along in the election petition, the petitioner relies on the speeches recorded in the audio and video cassettes and the same have not been served on the respondent and there is thus breach of mandate under section 81(3) of the R. P. Act. It has not been in dispute that under section 81(3) of the R.P. Act, every petition shall be accompanied as may as copies of the petition as there are number of the respondents mentioned in the petition and every copy shall be attested by the petitioner under his own signature certifying it to be a true copy of the petition. Under section 83, the contents of the election petition are being indicated and it is such election petition which has to be served on the respondents. Under section 83, the election petition shall contain a concise statement of material facts on which petitioner relies, shall set forth full particulars of any corrupt practice that the petitioner alleges including as full as possible statement of the names of the parties alleged to move committed such corrupt practice and the date and place of commission of each such corrupt practices. It shall be signed by the petitioner and verified in the manner laid down in Civil Procedure Code for verification of pleadings. The proviso thereto requires that where there is an allegation of corrupt practice the election petition shall be accompanied by affidavit in the prescribed form in support

of the allegation of such corrupt practices and the particulars thereof. This affidavit is provided in rule 94-A of the Conduct of Election Rules and it shall be in Form 25 annexed to the Conduct of Election Rules. Sub-section 2 of Section 83 requires that any Schedule or Annexure to the petition shall also be signed by the Petitioner and verified in the same manner by the petitioner. It would be thus obvious that an election petition shall contain concise statements of material facts. It may be that the material facts are drawn from the paper reports or even from the cassettes but when the petitioner seeks to rely on the contents, he may choose to reproduce them in the petition or may rely on the documents or cassettes which in turn shall form the integral part of the election petition. Now, if there is failure of this mandate on the part of the petitioner, the necessary consequence is envisaged in Section 83, which provides that the High Court shall dismiss the election petition when it does not comply with the provisions of Sections 81, 82 or 117 of the R. P. Act. It is a well settled law as seen from the series of the decisions rendered by the Supreme Court that the election petition shall contain material facts. If the single aspect of the material fact is wanting, there is an infraction of provision under section 83 which when read with section 86 should persuade the Court to dismiss the election petition. As regards particulars of corrupt practice, it is provided that they may not from that part of the mandate relating to sub-section (a) of Section 83 (1) of the R. P. Act. If the Court finds that such particulars should be called for, the Court should prevail on the petitioner to provide them. The safe-guard should be seen that their incorporation in the petition at late stage should not prejudice the respondent—returned candidate. Normally, such particulars should be called before the respondents file written statements or commence with the trial. The respondent should be reserved the right to meet those particulars, but when the evidence is over or even the trial has commenced wherein the evidence is recorded in respect of corrupt practices, ordinarily, the particulars should not be allowed to be introduced in regard to corrupt practices, which would jeopardise the cause of the returned candidate. The obvious logic is that the returned candidate may not have an opportunity to rebut those particulars. It is also the consistent view of the Supreme Court that the particulars should be supplied by the petitioner as early as possible, else that would weaken the probity of the allegations of corrupt practices canvassed by the election petitioner. It is not necessary to reproduce those decisions when those decisions are well known and call for all round insistence about their compliance in the trial of Election Petition.

5. In this background, the learned advocate for the respondent has particularly drawn my attention to paragraphs 4.12 and 4.25 of the election petition. In 4.12 it is stated by the petitioner that Acharya Dharmendraji, who belongs to Vishwa Hindu Parishad had delivered the speech at Parbhani on 31-5-1991 during the election period at Mondha Maidan and he spoke against Muslims who had no right to stay in India. The petitioner unequivocally stated that the petitioner was relying on the said audio cassette during the speech of 31-5-1991. It seems that the audio cassette has been produced on record, but the copy thereof has not been furnished to the respondent. The said para contains averments that if Hindu want to live, then they should vote for Hindu and thus return the candidate, who is the sponsored by Shivsena-B.J.P. alliance.

6. My attention is further drawn to the speeches of Uma Bharati—the Sitting Member of Parliament as well as Ex-Member of Parliament and the B.J.P. leader, who had delivered the speech of Aurangabad and the same was recorded on audio cassette and distributed throughout Parbhani Constituency and the petitioner has stated that he has also relied on this cassette of Uma Bharati, which was circulated for public throughout Parbhani Constituency. It is stated that instead of repeating the entire contents of the cassette, the petitioner was placing reliance upon the cassette, which has also been lodged along with the election petition. Those speeches get engrafted in the petition. Those speeches clearly related to canvassing votes on Hinduism and promoting hatred between Hindus and Mohammedans, which was clearly a corrupt practice as envisaged under section 123(3) and (3A) of the R.P. Act.

The reply thereto of the petitioner is that the necessary cassettes are tendered along with the petition. Undisputability the copies of the cassettes contained in speeches of Acharya Dharhendraj and Uma Bharati have not been delivered along with the election petition for being served on the respondents.

7. In order to resolve this controversy, it is necessary to probe into the averments in the election petition. The petitioner contested election to the Parliament from the Parliamentary Constituency No. 31 Parbhani at the last election, held on constituency No. 31 Parbhani at the last election, held on 12th June, 1991, the results whereof were declared on 19th June 1991. Vide Ex. 'A', the petitioner contested as Janata Dal candidate, whereas the respondent no. 1 contested as a candidate of Shivsena-B.J.P. alliance. The other candidates were either independent candidates or candidates sponsored by political parties. The respondent no. 1 was declared elected at the said election and the petitioner lost that election by a margin of about 21,000 votes. The petitioner has alleged that respondent no. 1 was the sponsored candidate of Shivsena and that he conducted election campaign on the Shivsena manifesto. Votes were solicited on Hindutwa. Similarly, the speeches were also delivered to promote hatred between two classes of communities i.e. between Hindu and Mohammedans. Posters and other election literature was circulated throughout the Parliamentary Constituency.

8. Coming to the individual corrupt practices, it is stated that on 6th May, 1991, Shivsena leader—Manohar Joshi delivered a speech in the Parliamentary Constituency and the same was recorded in Dainik "Tarun Bharat". On 10-5-1991, Balasaheb Thackrey leader of Shivsena, delivered speech at Parbhani, which also published in "Lokmat" on 12-5-1991. The cassette of speech was recorded by one Holambe and one Parihar, the report thereof is to be found at Ex. 'E'. The cassette is produced as Article 'I'. It is stated that one M.R. Aisf, Photographer also took the photographs and the speech was heard by one Abdul Gaffar and Asif. It was also attended by Hanumantrao Bobade, the sitting M.L.A. of the said party. On 16-5-1991, Chagan Bhujbal delivered speech at Jintoor containing the offending statements against Mohammedans and also soliciting votes on Hinduism and the same is to be found at Ex. 'F'. Similar speeches were delivered at Gangakhed. The speeches were recorded by one Kakane and one Das Jagatbhai. All the speakers had canvassed for votes on Hinduism and had also spoke that Mohammedans should quit India since on account of partition, Pakistan was allotted to them. It is further stated that the speakers from Vishwa Hindu Parishad, Bharatiya Janata Party and Bajrang Dal also delivered speeches in the Parliamentary Constituency. The speeches of Ritambhara, Uma Bharati and Acharya Dharmendraji were recorded in cassettes and their cassettes were circulated throughout the Parliamentary Constituency of Parbhani.

9. The learned advocate for the petitioner has contended that so far as speech of Uma Bharati is concerned, it is clearly stated that her speech was directed towards creating hatred between Hindus and Mohammedans. The petitioner has stated in following terms in Para 4.25 :

"4.25. The petitioner respectfully submits that the B.J. Leader and Ex-Member of Parliament as well as the present M.P. Uma Bharati had also delivered a speech at Aurangabad of which Audio cassettes were prepared by the Respondent no. 1 and those were distributed throughout the Parbhani Constituency and also some were used on vehicle for canvassing for him. The petitioner is relying upon the Audio cassette circulated by the Respondent no. 1 of the speech of Uma Bharati throughout the Parbhani Constituency. Instead of repeating entire contents of the said cassettes the petitioner is placing reliance

upon the said cassette and requesting this Hon'ble Court to go through the contents of the said audio cassettes which clearly shows that she had delivered speeches, not only at Aurangabad, but at various places, shows that she had also appealed in the name of Hindu. The petitioner is producing the said audio cassette along with this Election Petition. And all the contents therein recorded believe to be true and correct."

On going through this paragraph, it is clear that Uma Bharati delivered speech at Aurangabad and the said speech was circulated throughout the Parbhani. It would be also seen that the petitioner has clearly stated that instead of repeating the contents of the said cassettes, the petitioner was relying on that cassette, which has been produced along with the petition, but the copy thereof is not supplied for being served on the respondent. In the annexures, the speech of Uma Bharati is not to be seen and this would mean that the cassette is the only document on which the petitioner relies and which would thus be an integral part of the petition.

10. Relying on this situation, the learned advocate for Respondent no. 1 has drawn my attention to AIR 1990 Supreme Court 924, in the case of U. S. Sasidharan Vs. K. Karunakaran and Anr. The relevant observations are, "the material facts of particulars relating to any corrupt practice may be contained in a document and the election petitioner, without pleading the material facts or particulars of corrupt practice, may refer to the document. When such a reference is made in the election petition, a copy of the document must be supplied inasmuch as by making a reference to the document and without pleading its contents in the election petition, the document becomes incorporated in the election petition by reference. In other words, it forms an integral part of the election petition. Section 81(3) provides for giving a true copy of the election petition. When a document forms an integral part of the election petition and a copy of such document is not furnished to the respondent along with a copy of the election petition, the copy of the election petition will not be a true copy within the meaning of Sec. 81(3) and, as such, the court has to dismiss the election petition under Sec. 86(1) for non-compliance with Section 81(3)." The said ratio lays down that if the contents of the document are pleaded in the election petition, the document does not form integral part of the election petition. Now the wording of para 4.25 of the Election Petition would clearly indicate that the contents of the speech of Uma Bharati have not been specified in the election petition. The petitioner relies only on the cassette, which was circulated throughout Parbhani Constituency to canvass votes on the ground of Hinduism, and further to promote hatred between Hindus and Mohammedans. I feel that in this case the observations of the Sasidharan's case supra are wholly attracted. This infirmity has not been repelled by the petitioner by any convincing argument.

11. My attention is further drawn to Para 4.12 wherein the speech by Acharya Dharmendraji of Vishwa Hindu Parishad has been referred to. The said paragraph is reproduced for facility.

"4.12. The petitioner respectfully submits that Acharya Dharmendraji belonging to Vishwa Hindu Parishad and the said Organization which had supported Shiv-sena-BJP alliance, had delivered speech at Parbhani on 31-5-1991 in the evening at about 7.00 p.m. on the ground of Mondha Maidan, a general place of holding public meetings. In the said speech, Mr. Asif and one Kisan and other many persons had been taken audio cassette. From the contents of the Audio cassette the fact would be clear that he had specifically stated in his speech that the country had

been divided in two parts in the year 1947 itself and thereafter Muslims have not whatsoever right to stay in India. The petitioner respectfully submits that the said speaker was called by the respondent no. 1 which means the speech delivered by him was with his consent and/or approval and, therefore, the petitioner is relying upon the said audio-cassette recorded regarding his speech delivered on 31st May, 1991. The petitioner respectfully submits that, from the contents of the said cassette one fact would be clear that he had canvassed on the basis of casteism specifically stated that "if Hindus want to alive then they should vote Hindus only and the candidates sponsored by the Shiv-sena-BJP alliance which is the only alliance which can survive the Hinduism in India."

The reading of the above paragraph shows that the speech of Acharya Dharmendraji recorded in the cassette is relied upon. The petitioner has observed that he was relying on audio cassette recorded regarding speech delivered by Acharya Dharmendraji on 31-5-91. In the above paragraph the synopsis of what has been stated by the said speaker is recorded, but the entire contents are not reproduced. Only it is observed that if Hindus want to live the candidate sponsored by Shiv-sena-BJP alliance should be voted for. The said speaker Acharya Dharmendraji was called by respondent no. 1 in support of his election. It can be observed that the transcription of the cassette should have been reproduced either in the paragraph or in the alternative the same should have been tendered along with the copy thereof for being delivered to the Respondent. There is thus breach of Section 21(3) of R.P. Act. Whatever has been incorporated about the speech of Acharya Dharmendraji is the outline of the speech and not all the contents of the speech. The Respondent would not be able to meet the case of corrupt practice unless all details of the speech are made available to him. Bare outlines would not amount to compliance of the ratio laid down by the Supreme Court in Sasidharan's case—supra. There is thus breach of Section 81(3) of the R.P. Act

12. Without adverting on merits, it will have to be stated that to some extent absence of transcription of speeches delivered by Babasaheb Thackrey and Chagan Bhujbal respectively, on 10-5-1991 and 16-5-1991, may also incur the infirmity under the above provision. In the petition, it is clearly stated that these speeches are relied upon, but no transcription has been produced. Whatever translation is produced is of paper news, but when petitioner chooses to rely upon the cassette, it was expected of him to have tendered the copies of the cassettes to be delivered to the respondent. Of course, I do not answer about this infirmity with certainty as the contents of the speeches involving corrupt practice has been tendered on record through other source.

13. All the same, it will have to be stated that so far as speech of Uma Bharati is concerned, the absence of copy of the cassette containing her speech is a serious legal infirmity in absence of the reproduction of her speech in the petition. The ratio laid down in the Sasidharan's case, cited supra, shall come with full force in operation in this case.

14. It has not been moved on behalf of the petitioner that he does not wish to rely on those speeches in support of allegations of corrupt practices. It is also not submitted during the course of argument that the petitioner does not want to rely on those speeches and that the same should be deleted. In that light of the matter, it was bounded duty of the petitioner to deliver the copy of the cassette containing Uma Bharati's speech. This legal infirmity has not been overcome by the petitioner. The petition, therefore, deserves to be dismissed on that count.

15. So far as the affirmation is concerned, it has not been seriously pressed by the learned advocate for the petitioner that the affirmation before the Senior Superintendent of the High Court would render the affidavit in Form 25 as invalid. In other election petitions, the reasoning has been stated in extenso. In view of Chapter 2 Rule 9 of the Bombay High Court Appellate Side Rules, 1960, the Senior Superintendent is authorised to administer oaths. Merely because his name and designation does not appear in the list of Officers in Rule 197 of the Original Side Rules of the High Court, it cannot be said that the appointment of the Senior Superintendent of the High Court in the Appellate side Rules as Oath Commissioner would be illegal and would render the Senior Superintendent incompetent to administer the oath. Such a question

has been dealt with in the Ruling reported in AIR 1966 Supreme Court 436, in the case of Kamal Narayan Vs. Dwarka-prasad. This Ruling operates as sanction in favour of the Senior Superintendent of the High Court to administer oath. It cannot be heard that the Senior Superintendent is not authorised under the Original Side Rules. He is the Oath Commissioner under Indian Oaths Act. High Court is "Court", capable of authorising any person to administer oath.

16. In view of the finding on Point No. 1 in favour of the Respondent Ex. 7 is allowed and the petition is hereby dismissed with, however, no order as to costs. Application Ex. 8 is, however, dismissed.

